

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY R. CORGATELLI,

Claimant,

v.

STEEL WEST, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

STATE OF IDAHO, INDUSTRIAL SPECIAL
INDEMNITY FUND,

Defendants.

IC 2005-501771

ORDER TO CLARIFY

Filed April 5, 2013

Pursuant to Idaho Code § 72-718, Defendants Employer and Surety (“Defendants”) move for reconsideration or clarification of the Commission’s July 26, 2012 decision in the above-captioned case. In the decision, the Commission found that Defendants as well as the Industrial Special Indemnity Fund (“ISIF”) were liable to pay for Claimant’s total permanent disability benefits. Specifically, Defendants were found liable to pay for 66.7% of Claimant’s disability, which is equal to the amount of \$99,599.78. ISIF was found liable to pay the remainder of Claimant’s disability under the formula adopted in *Carey v. Clearwater County Road Department*, 107 Idaho 109, 686 P.2d 54 (1984).

In their motion, Defendants argue that they should receive credit for permanent partial impairment (PPI) benefits already paid on this claim. Claimant objects to the motion, arguing, first, that Defendants have impermissibly raised this issue post-hearing rather than at hearing, and second, that Defendants have a separate obligation to pay permanent impairment and permanent disability benefits and that it would be a windfall to Defendants to allow an offset for

PPI.

Defendants, however, are correct that they should receive credit for PPI benefits already paid on this claim. Claimant's accident-related permanent impairment is part of his permanent disability. *See* Idaho Code § 72-425; *see also Eckhart v. ISIF*, 133 Idaho 260, 264, 985 P.2d 685, 689 (1999) ("The evaluation of permanent disability under § 72-425 includes consideration of all physical impairments that were caused by the claimant's work-related injury...."). Because Claimant's disability is inclusive of his accident-related impairment, Defendants are entitled to credit for payments made on that impairment. Holding otherwise would essentially require Defendants to pay benefits on the same impairment rating twice. Claimant's reliance on *Close v. General Construction Co.*, 61 Idaho 689, 106 P.2d 1007 (1940), in arguing this issue is misplaced, because the holding in that case addressed a situation that did not involve the relationship between permanent impairment and permanent disability.

Claimant's argument that this is an issue impermissibly raised post-hearing is unpersuasive. Defendants have asked for clarification of the decision, and they could not have asked, at hearing, for clarification of a decision that did not yet exist. Nothing in the decision should be interpreted to require Defendants to pay disability exclusive of impairment. The \$99,599.78 figure was cited only to illustrate the total amount of disability Defendants owed in this case.

Based on the foregoing analysis, Defendants are entitled to credit on the disability award for permanent impairment benefits already paid on this claim.

IT IS SO ORDERED.

DATED this __5th____ day of April, 2013.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2013, a true and correct copy of the foregoing **ORDER TO CLARIFY** was served by regular United States mail upon each of the following:

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/s/